



17 AUG 2007

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In re Application of  
BERGSMANN, Martin, et al.  
Application No.: 10/566,144  
PCT No.: PCT/DE2004/001668.  
Int. Filing Date: 26 July 2004  
Priority Date: 28 July 2003

Attorney Docket No.: 57036/M521  
For: DEVICE FOR THE STORAGE OF SOLID  
AND/OR LIQUID AND/OR GASEOUS  
OBJECTS

DECISION ON  
PETITION UNDER  
37 CFR 1.181

This decision is issued in response to the "Petition Requesting resetting Of Mailing Date Of Notification Of Missing Requirements To November 29, 2006 And Waiver Of Petition Fee And Extension Fees" filed 05 March 2007. No petition fee is required.

**BACKGROUND**

On 26 July 2004, applicants filed international application PCT/DE2004/001668. The international application claimed a priority date of 28 July 2003, and it designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau (IB) on 10 February 2005. The deadline for payment of the basic national fee in the United States was to thirty months from the priority date, i.e., 28 January 2006.

On 27 January 2006, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee and an unsigned declaration.

On 05 June 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring submission of a translation of the international application into English and an executed oath or declaration in compliance with 37 CFR 1.497.

On 05 December 2006, applicants filed a response to the Notification of Missing Requirements which included, among other materials, an executed declaration in compliance with 37 CFR 1.497, an English translation of the international application, and the authorization to charge Deposit Account No. 03-1728 for any required fees.

On 05 March 2007, applicants filed the petition considered herein. The petition requests that the mailing date of the Notification of Missing Requirements mailed 05 June 2006 be reset to 29 November 2006, the date on which applicants assert the notification was first received. Based on this resetting, applicants request a waiver of any extension fees required with respect to the 05 December 2006 response to the Notification Of Missing Requirements.

### **DISCUSSION**

#### **A. Petition To Reset Mailing Date**

Petitioner states that Notification of Missing Requirements was not received until 29 November 2006, which was after the response due date. For these situations, the United States Patent and Trademark Office (USPTO) set forth guidelines for restarting the period at 1160 OG 14, which have been incorporated into the MPEP. Section 710.06 of the MPEP states, a petition requesting restarting a previously set response period due to the late receipt of an office action will be granted when:

- (A) the petition is filed within 2 weeks of the date of receipt of the office action at the correspondence address;
- (B) a substantial portion of the set reply period had elapsed on the date of receipt (e.g., at least 1 month of a 2- or 3-month reply period had elapsed); and
- (C) the petition includes: (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., a copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon, a copy of the envelope (which contained the Office action) having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), and (2) a statement setting forth the date of receipt of the Office action at the correspondence address and explaining how the evidence being presented establishes the date of receipt of the Office action at the correspondence address.

Here, applicants did not file the present petition within two weeks of the 29 November 2006 receipt date, as required under MPEP section 710.06. Since the applicants did not file the required petition within the two-week period (i.e., by 13 December 2006), the mail date (and consequent response deadline) for the Notification of Missing Requirements cannot be reset.

#### **B. Required Extension Fees**

As discussed above, applicants filed a response to the Notification Of Missing Requirements on 05 December 2006. This response included the required declaration and English translation.

Based on the 05 June 2006 mail date of the Notification Of Missing Requirements, a four-month extension fee is required in order for the 05 December 2006 response to be considered timely, and thereby avoid abandonment of the application. Pursuant to the fee authorization contained in the 05 December 2006 submission, Deposit Account No. 03-1728 will be charged the fee for such extension.

In view of this extension payment, the 05 December 2006 submission is considered a timely response to the Notification Of Missing Requirements mailed 05 June 2006.

### CONCLUSION

For the reasons discussed above, applicant's request to reset the mailing date, and consequent response period, with respect to the Notification of missing Requirements mailed 05 June 2006, is **DISMISSED** without prejudice.

Deposit Account No. 03-1728 will be charged the \$1590 fee for the four-month extension of time required for the 05 December 2006 submission to be considered a timely response to the Notification of Missing Requirements.

If reconsideration of the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTH** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." No additional fee is required. Extensions of time under 37 CFR 1.136(a) are permitted.

Any further correspondence with respect to this petition should be addressed to the Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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